

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO)

## I.(a) PLAINTIFFS

OPERATING ENGINEERS HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, et al.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

Alameda

(c) ATTORNEY(S) (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

Muriel B. Kaplan, Saltzman & Johnson Law Corporation  
120 Howard Street, Suite 520, San Francisco, CA 94105  
415-882-7900

## DEFENDANTS

HAMMAN'S INC., a California Corporation, and  
JAMES DEAN HAMMAN, Individually

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

8-680 PTH

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1 U.S. Government Plaintiff  
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR

PLAINTIFF	(For diversity cases only)		AND ONE BOX FOR DEFENDANT	
	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

## IV. ORIGIN

## (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court  
 4 Reinstated or Reopened  
 5 Transferred from Another district (specify) \_\_\_\_\_  
 6 Multidistrict Litigation  
 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
	<b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
			<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input checked="" type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 791 Emp.Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (US Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) Action for collection of delinquent contribution payments under Employee Retirement Income Security Act (29 USC Sections 1001 et seq.)

VII. REQUESTED IN  CHECK IF THIS IS A CLASS ACTION DEMAND \$  CHECK YES only if demanded in complaint:  
COMPLAINT: UNDER F.R.C.P. 23 JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE A "X" IN ONE BOX ONLY)  SAN FRANCISCO/OAKLAND  SAN JOSE

DATE

1/29/08

SIGNATURE OF ATTORNEY OR RECORD

Muriel B. Kaplan

Court Name: U.S. District Court, NDCA  
Division: 3  
Receipt Number: 34611015118  
Cashier ID: bucklem  
Transaction Date: 01/29/2008  
Payer Name: saltzman and johnson

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CIVIL FILING FEE  
For: gil crosthwaite  
Case/Party: D-CAN-3-08-CV-000608-001  
Amount: \$350.00

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CHECK  
Check/Money Order Num: 23996  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

*DP/AB*  
Checks and drafts are accepted  
subject to collections and full  
credit will only be given when the  
check or draft has been accepted by  
the financial institution on which  
it was drawn.

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6 Attorneys for Plaintiffs

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8

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10

11 GIL CROSTHWAITE, RUSS BURNS, in their  
 12 respective capacities as Trustees of the  
 13 OPERATING ENGINEERS HEALTH AND  
 13 WELFARE TRUST FUND FOR NORTHERN  
 14 CALIFORNIA; PENSION TRUST FUND  
 14 FOR OPERATING ENGINEERS;  
 15 PENSIONED OPERATING ENGINEERS  
 15 HEALTH AND WELFARE FUND;  
 16 OPERATING ENGINEERS AND  
 16 PARTICIPATING EMPLOYERS PRE-  
 17 APPRENTICESHIP, APPRENTICE AND  
 17 JOURNEYMEN AFFIRMATIVE ACTION  
 18 TRAINING FUND; OPERATING  
 18 ENGINEERS VACATION AND HOLIDAY  
 19 PLAN; OPERATING ENGINEERS  
 19 CONTRACT ADMINISTRATION TRUST  
 20 FUND; OPERATING ENGINEERS MARKET  
 20 PRESERVATION TRUST FUND;  
 21 OPERATING ENGINEERS INDUSTRY  
 21 STABILIZATION TRUST FUND; BUSINESS  
 22 DEVELOPMENT TRUST FUND; AND  
 22 HEAVY AND HIGHWAY COMMITTEE,

Case No.: C08-0680 PJH

**COMPLAINT**

23 Plaintiffs,

24 v.

25 HAMMAN'S INC., a California Corporation,  
 25 and JAMES DEAN HAMMAN, Individually,

26 Defendants.

27

28

-1-

**COMPLAINT**

**Case No.: C08-0680 PJH**

1  
Parties

2 1. The Operating Engineers Health and Welfare Trust Fund for Northern California;  
3 Pension Trust Fund for Operating Engineers (which includes the Pension Plan for the Pension  
4 Trust Fund for Operating Engineers, and the Operating Engineers Annuity Plan); Pensioned  
5 Operating Engineers Health and Welfare Fund; Operating Engineers and Participating Employers  
6 Pre-Apprenticeship; Apprentice and Journeyman Affirmative Action Training Fund; and  
7 Operating Engineers Vacation and Holiday Plan are employee benefit plans as defined in the  
8 Employee Retirement Income Security Act of 1974 ("ERISA") § 3(3), 29 U.S.C. § 1002(3). They  
9 and their fiduciaries are together referred to herein as "ERISA Plaintiffs." Gil Crosthwaite and  
10 Russ Burns are Co-Chairmen of the Joint Boards of Trustees of the ERISA Plaintiffs with  
11 authority to act on behalf of all Trustees.

12 2. Operating Engineers Local Union No. 3 of the International Union of Operating  
13 Engineers, AFL-CIO ("Union") is a labor organization as defined in § 2(5) of the National Labor  
14 Relations Act ("NLRA"), 29 U.S.C. § 152(5).

15 3. HAMMAN'S INC. and JAMES DEAN HAMMAN are employers by virtue of  
16 ERISA § 3(5), 29 U.S.C. § 1002(5), and NLRA § 2(2), 29 U.S.C. § 152(2). He and those entities  
17 are referred to herein as "Defendants". JAMES DEAN HAMMAN is further a personal guarantor  
18 of payment to plaintiffs of the fringe benefits claimed herein, pursuant to the Collective  
19 Bargaining Agreement described below.

20  
21  
22  
23  
Jurisdiction

24 4. Jurisdiction exists in this Court over the claims asserted by the ERISA Plaintiffs by  
25 virtue of ERISA § 502, 29 U.S.C. § 1132, in that the ERISA Plaintiffs seek to enforce the  
26 provisions of ERISA and the terms of their plans, seek to enjoin the acts and practices which  
27

violate ERISA, seek equitable relief to redress such violations, and seek all other appropriate relief under ERISA.

5. Jurisdiction exists in this Court over all the claims by virtue of Labor Management Relations Act ("LMRA") § 301, 29 U.S.C. § 185, in that the plaintiffs seek to enforce the terms and conditions of a collective bargaining agreement between the employer and a labor organization.

6. To the extent jurisdiction over any claim does not exist under ERISA or the LMRA, supplemental jurisdiction exists in this Court over such claims by virtue of 29 U.S.C. § 1367 in that they arise out of a common nucleus of operative facts that form the basis of the federal claims asserted herein, each of which has a substantial ground in federal jurisdiction.

## Venue

7. Venue exists in this Court with respect to the claims under ERISA § 502 because all of the plans of the ERISA Plaintiffs are administered within this district and the breach took place in this district.

8.       Venue exists in this Court with respect to the claims under LMRA §301(a) because this Court has jurisdiction over the parties, as the Union maintains its principal place of business in this district, its duly authorized officers or agents are engaged in representing employee members in this district, and the claims arise in this district.

## Intradistrict Assignment

9. The basis for assignment of this action to this court's Oakland Division is that all of the events and omissions giving rise to plaintiffs' claims occurred in the County of Alameda, where the ERISA Plaintiff funds and union dues, were administered during the period claimed herein, and where defendants therefore failed to fulfill their statutory and contractual obligations to the plaintiffs.

## Bargaining Agreement

2       10. The Union and defendants entered into a collective bargaining agreement requiring  
3 employer contributions to the Plaintiff Funds, and to the Union for union dues and to other Trust  
4 Funds more fully described in the Master Agreement incorporated into the Independent Northern  
5 California Construction Agreement to which defendants are signatory. That Agreement is referred  
6 to herein as the "Bargaining Agreement," and the ERISA Plaintiffs and Trust Funds are third party  
7 beneficiaries of that Bargaining Agreement. Additionally, Hamman's Inc. is signatory to the  
8 Private Work Agreement for District 10 (Santa Rosa), which similarly requires contributions to  
9 the plaintiff Funds, to the Union for dues, and to other Trust Funds more fully described therein.  
10

11. The Operating Engineers Market Preservation Fund, Operating Engineers Industry  
12 Stabilization Trust Fund, Business Development Trust Fund, and Heavy and Highway Committee,  
13 together referred to herein as "Trust Funds," are funds for which plaintiff Boards of Trustees are  
14 the assignees of monies due under the Bargaining Agreement.  
15

16        12. Under the terms of said Bargaining Agreement and of the governing documents of  
17 the ERISA Plaintiffs which documents are incorporated into the Bargaining Agreement and made  
18 binding on defendants, defendants are (1) required to submit monthly reports of hours worked by  
19 its employees, and (2) to regularly pay to the Plaintiff ERISA Funds, to the Union for union dues,  
20 and to the Trust Funds, certain sums of money, the amounts of which are determined by the hours  
21 worked by employees of defendants, all as more fully set forth in said Bargaining Agreement.  
22  
23 Also under the terms of said Bargaining Agreement and the governing documents of the Plaintiff  
24 Funds, defendants (3) agreed to pay liquidated damages for each delinquent payment, which  
25 become part of the contributions. Defendants further agreed (4) to pay interest on the combined  
26 contributions and liquidated damages at the rates set by the Bargaining Agreement, from the day

immediately following the date that each such payment became due until paid in full, all as more fully set forth in said Bargaining Agreement.

Under the terms of the Bargaining Agreement to which he is signatory, (5) defendant James Dean Hamman is individually liable for any corporate obligation for payment to plaintiff Trust Funds. Included therein is the obligation to provide certain records for review by plaintiffs' representatives, and to (6) pay any amounts found due on audit.

## Facts

13. Defendants underpaid contributions owing to the plaintiffs under the Bargaining Agreement for work performed during the months November 2005 through November 2006, and further failed to pay contributions reported by them as owing to the plaintiffs under the Bargaining Agreement for work performed during the months of July through September 2007. Liquidated damages and interest have been incurred and are owing for the unpaid contributions owed for this period.

14. Demand was made on defendants on behalf of plaintiffs, for payment of all delinquent contributions, liquidated damages and interest due to the ERISA Plaintiff Funds, the Union, and the Trust Funds. Defendant has failed and refused to make payment of any amounts due claimed herein, as required by the Bargaining Agreement.

15. Defendants have a statutory duty to make the required payments timely to the ERISA Plaintiffs under ERISA § 515, 29 U.S.C. § 1145, and by failing to make such timely payments has violated the law.

16. Defendants' failure and refusal to timely submit the aforesaid payments, as alleged herein, was at all times, and still is, willful. Said refusal is unjustified and done with malicious intent. Defendants' failure to timely make such payments in compliance with the Bargaining Agreement has reduced the corpus of the ERISA Plaintiff funds and operating ability of the

1 Union, thereby impairing their ability to pay or provide benefits to members and beneficiaries, and  
2 thereby causing harm to all ERISA Plaintiffs funds and to the Union. Defendants' obligations  
3 pursuant to the Bargaining Agreement are continuing obligations; defendants continue to breach  
4 said Bargaining Agreement by failing and refusing to timely pay monies due thereunder to the  
5 Plaintiff Funds and the Union. Plaintiffs are informed and believe, and therefore allege, that  
6 defendants will continue to willfully refuse to make said payments unless ordered by this Court to  
7 comply.  
8

9        17. Plaintiffs are without an adequate remedy at law and will suffer continuing and  
10 irreparable injury, loss and damage unless defendants are ordered specifically to perform all  
11 obligations required on defendants' part to be performed under ERISA, 29 U.S.C. §§ 1101-1381,  
12 the LMRA, 29 U.S.C. §§ 141-197, the Bargaining Agreement, and the governing documents of  
13 the Plaintiffs Funds referred to therein, and are restrained from continuing to refuse to perform as  
14 required thereunder.  
15

16        18. This Court is authorized to issue injunctive relief based on traditional standard. As  
17 set forth above, plaintiffs have a strong likelihood of success on the merits, there is the possibility  
18 that the Board of Trustees and the participants will suffer irreparable injuries, and the balance of  
19 hardships and advancement of public interest favor plaintiffs.

## Prayer

WHEREFORE, Plaintiffs pray as follows:

23 1. For a judgment against defendants as follows:

24                   a.     For unpaid contributions for hours worked as specified above and thereafter  
25 through judgment:

26 (1) To the ERISA Plaintiffs, in accordance with ERISA Section  
27 502(g)(2)(A), 29 U.S.C. Section 1132(g)(2)(A) and the Bargaining Agreement;

1 (2) To the Union in accordance with the Bargaining Agreement.

2 b. Liquidated damages on late paid and unpaid contributions in an amount  
 3 provided for under the Bargaining Agreement and governing documents of the Plaintiff Funds and  
 4 with respect to the ERISA Plaintiffs, ERISA Section 502(g)(2)(c), 29 U.S.C. Section  
 5 1132(g)(2)(c).

6 c. Interest on late paid and unpaid contributions, dues and liquidated damages  
 7 which become a part of the contributions, at the rates set in accordance with the Bargaining  
 8 Agreement, the governing documents of the ERISA Plaintiffs and the ERISA Section  
 9 502(g)(2)(B), 29 U.S.C. Section 1132(g)(2)(B).

10 2. For any additional contributions and dues payable to plaintiffs and the Trust Funds  
 11 as third party beneficiaries of the Bargaining Agreements at time of judgment, plus interest and  
 12 liquidated damages as above provided and in accordance with the Bargaining Agreements, the  
 13 governing documents of the Plaintiff Funds, and with respect to the ERISA Plaintiffs, ERISA  
 14 Section 502(g)(2), 29 U.S.C. Section 1132(g)(2).

15 3. ERISA Plaintiffs' reasonable attorneys' fees and costs of this action and for  
 16 auditors' costs, in accordance with ERISA § 502(g)(2)(D) and (E), 29 U.S.C. § 1132(g)(2)(D) and  
 17 (E); and in accordance with the collective bargaining agreement for all Bargained Plans, and with  
 18 LMRA Section 301, 29 U.S.C. § 185 for all plaintiffs.

19 4. For an order,

20 (a) requiring that defendants comply with their obligations to plaintiffs under  
 21 the terms of the Bargaining Agreement and the governing documents referred to therein;

22 (b) enjoining defendants from violating the terms of those documents and of  
 23 ERISA; and

24 ///

1 (c) enjoining defendants from disposing of any assets until said terms have  
2 been complied with, and from continuation or operating of defendants' business until said terms  
3 have been complied with.

4 5. That the Court retain jurisdiction of this case pending compliance with its orders.

5 6. For such other and further relief as the Court may deem just and proper.

7  
8 Dated: January 28, 2008

SALTZMAN & JOHNSON LAW CORPORATION

9  
10 By: \_\_\_\_\_/s/ \_\_\_\_\_  
11 Muriel B. Kaplan  
12 Attorneys for Plaintiffs  
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